

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0378P

**Gross and Adjusted Gross Income Tax
Calendar Years 1994 and 1995**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

At hearing the taxpayer states it made significant acquisitions of other businesses in 1995 increasing the filing of state returns from eight to forty-three. The increased state income tax filing and the expanded overall corporate organizational structure resulted in taxpayer's incorrect calculation of its apportionment percentage that was compounded by the significant turnover that occurred in the employees who were responsible for accumulating this apportionment data. In addition, the new employees had to deal with the integration of both accounting and computer systems. The combination of employee turnover and systems integration contributed to the failure of the new employees to appropriately report taxpayer's apportionment percentage. Further, the department was in possession of taxpayer's 1995 tax overpayment that exceeded the assessment of additional tax, penalty and interest.

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DISCUSSION

At issue is whether the taxpayer was negligent in failing to report income subject to gross income tax and correctly apportioning income subject to adjusted gross tax.

Taxpayer states it makes every effort to correctly remit tax due, however, with the turnover in employees, the acquisition of several companies, and a system conversion, several items were not correctly reported. In addition, it has an overpayment in 1995 that it requested the Department apply to its estimated tax account for the 1996 year. Taxpayer asserts that it is illogical for the Department to assess penalty for amounts that taxpayer has effectively prepaid due to the application to the following year estimated tax account.

Taxpayer failed to include clearly taxable transactions for gross income tax; therefore, the penalty may not be waived. The adjustment for adjusted gross stemmed from the apportionment percentage which was increased from 64.34 percent to 72.94 percent due to the taxpayer's failure to include, primarily, more than fifty percent (50%) of wages in both the numerator and the denominator of the payroll factor. Although this was not a prior audit issue, taxpayer utilized a large accounting firm that should have verified the information.

The department finds no reasonable cause exists, therefore, the request for penalty waiver is denied.

FINDING

Taxpayer's protest is denied.